

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAMEN D. RABB,

Plaintiff,

v.

ESTEVEN FIGUEROA, et al.,

Defendants.

No. 1:23-cv-00843-JLT-SAB (PC)

FINDINGS AND RECOMMENDATION
RECOMMENDING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT BE DENIED

(ECF No. 30)

Plaintiff Isaiah J. Petillo is appearing pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for summary judgment, filed February 16, 2024. (ECF No. 30.) Plaintiff's motion must be denied.

I.

DISCUSSION

The Prison Litigation Reform Act provides that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and "unexhausted claims cannot be brought in court." Jones v. Bock, 549 U.S. 199, 211 (2007). Inmates are required to "complete the administrative review process in accordance with the

1 applicable procedural rules, including deadlines, as a precondition to bringing suit in federal
2 court.” Woodford v. Ngo, 548 U.S. 81, 88, 93 (2006). The exhaustion requirement applies to all
3 inmate suits relating to prison life, Porter v. Nussle, 534 U.S. 516, 532 (2002), regardless of the
4 relief sought by the prisoner or offered by the administrative process, Booth v. Churner, 532 U.S.
5 731, 741 (2001).

6 The failure to exhaust administrative remedies is an affirmative defense, which the
7 defendant must plead and prove. Jones, 549 U.S. at 204, 216. The defendant bears the burden of
8 producing evidence that proves a failure to exhaust; and, summary judgment is appropriate only if
9 the undisputed evidence, viewed in the light most favorable to the plaintiff, shows the plaintiff
10 failed to exhaust. Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir. 2014). On a motion for summary
11 judgment, the defendant must prove (1) the existence of an available administrative remedy and
12 (2) that Plaintiff failed to exhaust that remedy. Williams v. Paramo, 775 F.3d 1182, 1191 (9th Cir.
13 2015) (citations omitted). If the defendant meets this burden, “the burden shifts to the plaintiff,
14 who must show that there is something particular in his case that made the existing and generally
15 available administrative remedies effectively unavailable to him.” Id. (citations omitted). If the
16 plaintiff fails to meet this burden, the court must dismiss the unexhausted claims or action without
17 prejudice. See Lira v. Herrera, 427 F.3d 1164, 1175 (9th Cir. 2005).

18 Plaintiff is advised that he is not required to plead and/or prove exhaustion of the
19 administrative remedies because it is an affirmative defense. Further, To establish the absence of
20 a genuine factual dispute, Plaintiff must cite “to particular parts of materials in the record,
21 including depositions, documents, electronically stored information, affidavits or declarations,
22 stipulations (including those made for purposes of the motion only), admissions, interrogatory
23 answers, or other materials ...” Fed. R. Civ. P. 56(c)(1)(A); see also Local Rule 260(a). Plaintiff's
24 motion for summary judgment fails to comply with Federal Rule 56(c)(1)(A) and Local Rule
25 260(a). Litigants who proceed pro se are held to “less stringent standards than formal pleadings
26 drafted by lawyers.” Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam). Still, “[p]ro se
27 litigants must follow the same rules of procedure that govern other litigants.” King v. Atiyeh, 814
28 F.2d 565, 567 (9th Cir. 1987) (citations omitted), overruled on other grounds, Lacey v. Maricopa

1 County, 693 F.3d 896 (9th Cir. 2012) (en banc). Accordingly, Plaintiff's motion for summary
2 judgment should be denied.

3 **II.**

4 **RECOMMENDATION**

5 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's motion for
6 summary judgment, filed on February 16, 2024 (ECF No. 30) be DENIED.

7 This Findings and Recommendation will be submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
9 **days** after being served with this Findings and Recommendation, the parties may file written
10 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
11 Findings and Recommendation." The parties are advised that failure to file objections within the
12 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,
13 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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15 IT IS SO ORDERED.

16 Dated: **February 20, 2024**

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UNITED STATES MAGISTRATE JUDGE